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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

James Lynn Styers,
Petitioner,
vs.
Charles L. Ryan, et al.,
Respondents.) No. CV-98-2244-PHX-JAT
)
) DEATH PENALTY CASE
)
) **ORDER ON CERTIFICATE
OF APPEALABILITY**
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)
)
)

Before the Court is Petitioner's Motion for Certificate of Appealability from the order denying his motion to enter judgment in this habeas corpus action.

Rule 22(b) of the Federal Rules of Appellate Procedure provides that when an appeal is taken by a petitioner, the district judge who rendered the judgment “shall” either issue a certificate of appealability (“COA”) or state the reasons why such a certificate should not issue. Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner “has made a substantial showing of the denial of a constitutional right.” This showing can be established by demonstrating that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner” or that the issues were “adequate to deserve encouragement to proceed further.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

The Court finds that reasonable jurists could debate whether, in correcting the constitutional error in his sentence, the state court was obligated to provide Petitioner with

1 a new sentencing proceeding before a jury. Therefore, the Court will grant a COA on that
2 issue. For the reasons stated in the Court's order of July 26, 2012, the Court denies a COA
3 on the other issues requested by Petitioner in his motion.

4 Accordingly,

5 **IT IS ORDERED** that Petitioner's Motion for Certificate of Appealability (Doc. 175)
6 is **GRANTED IN PART**. The Court finds that reasonable jurists could debate whether, in
7 correcting the constitutional error in his sentence, the state court was obligated to provide
8 Petitioner with a new sentencing proceeding before a jury.

9 DATED this 10th day of September, 2012.

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12 James A. Teilborg
13 United States District Judge
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